

Jane L. Froyd (State Bar No. 220776)
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
jfroyd@jonesday.com

John G. Froemming (Admitted *pro hac vice*)
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jfroemming@jonesday.com

Attorney for Plaintiffs
BMW OF NORTH AMERICA, LLC,
ROLLS-ROYCE MOTOR CARS NA, LLC,
ROLLS-ROYCE MOTOR CARS LIMITED,
and
BAYERISCHE MOTOREN WERKE AG

Mark B. Frazier (State Bar No. 107221)
Damon Mircheff (State Bar No. 216257)
RUTAN & TUCKER, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, California 92626-1931
Telephone: (714) 641-5100
Facsimile: (714) 546-9035
mfrazier@rutan.com
dmircheff@rutan.com

Attorneys for Defendants
DINODIRECT CORP.; DINODIRECT
CHINA LTD.; B2FORCE INT'L CORP.;
AND JIANFENG FENG aka KEVIN FENG
aka KEVIN FENN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BMW OF NORTH AMERICA, LLC,
ROLLS-ROYCE MOTOR CARS NA,
LLC, ROLLS-ROYCE MOTOR CARS
LIMITED, and
BAYERISCHE MOTOREN WERKE
AG,

Plaintiffs,

Case No. 3:11-cv-04598-WHA

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

Judge: Hon. William Alsup

1 v.

2 DINODIRECT CORP.,
3 DINODIRECT CHINA LTD.,
4 B2CFORCE INT'L CORP., and
JIANFENG FENG a/k/a KEVIN FENN
a/k/a KEVIN FENG,

5 Defendants.

6 This action, having come on for consideration on the Amended Complaint of
7 the Plaintiffs for direct trademark infringement and counterfeiting and unfair
8 competition against the Defendants with regard to Plaintiffs' proprietary rights in
9 their trademarks;

10 The Defendants, having stipulated to the facts referenced herein, and the
11 parties having otherwise waived the entry of findings of fact and conclusions of law
12 pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without trial,
13 argument or adjudication of any issue of fact or law, having consented and
14 stipulated to the entry of this Consent Judgment and Permanent Injunction under
15 the terms provided herein:

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

17 This Court has jurisdiction over the subject matter of this action under the
18 laws of the United States, 15 U.S.C. § 1121 et seq., and supplemental jurisdiction
19 over Plaintiffs' state law claims under 28 U.S.C. § 1367(a), and has jurisdiction
20 over each of the Defendants. The claims arising under the laws of the State of
21 California are joined with substantial and related claims under the trademark laws
22 of the United States.

23 The Defendants acknowledge the existence and validity of the trademarks
24 described in Paragraphs 14-22 of Plaintiffs' Amended Complaint, attached as
25 Exhibit A. Specifically, BMW is the exclusive owner of valid and subsisting federal
26 trademark registrations, including trademark registrations for its Roundel logo,
27 "BMW" mark, Rolls-Royce Badge ("RR Badge"), "BMW Group" mark, Flying
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1 Lady Device, “Z8” mark, and M-Stripes logo, attached hereto as Exhibit B, as well
2 as common law rights to the trademark BMW MOTORSPORT (collectively, the
3 “BMW Marks”), and BMW’s Roundel logo, “BMW” word mark, and RR Badge
4 are famous. In addition, BMW has extensively used and advertised the BMW
5 Marks in connection with its business of designing, manufacturing, distributing,
6 offering for sale and selling motor vehicles, vehicles parts, and lifestyle items
7 throughout the United States.

8 **IT IS FURTHER ORDERED** that:

9 1. Defendants, their parents, affiliates, subsidiaries, and their respective
10 officers, agents, servants, employees, independent contractors and attorneys, or any
11 other person or entity acting in concert or participating with anyone described
12 above, and any successor in interest or future owners of the Defendants, agree to be
13 and are immediately and permanently enjoined from:

14 A. designing, creating, manufacturing, advertising, marketing,
15 promoting, offering for sale, ordering, accepting orders for, providing the means to
16 order, brokering, selling, warehousing, delivering, shipping, importing, exporting,
17 distributing, or accepting shipment or delivery of, any products that are not made or
18 authorized by BMW that depict or bear any of the BMW Marks or any other
19 trademark or logo of BMW or colorable imitations thereof, including any Chinese
20 version thereof, or facilitating, inducing, or assisting any of the activity set forth
21 above;

22 B. operating or hosting any website that sells or offers to sell goods
23 using counterfeit reproductions of the BMW Marks or any colorable imitations
24 thereof or any other trademark of BMW’s; or permitting, facilitating or allowing
25 suppliers, customers, users or members of or to www.dinodirect.com or any other
26 website or business now or in the future owned, operated or controlled wholly or in
27 part by, or affiliated with any of the Defendants, to post or display listings or offers
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1 to sell, buy, manufacture or distribute goods bearing a BMW Mark or advertised
2 with a BMW logo, which are not genuine BMW goods.

3 C. displaying BMW's logos or colorable imitations thereof,
4 including but not limited to BMW's Roundel logo, RR Badge, M-Stripes logo, and
5 MINI Wings logo (attached hereto as Exhibit C), on any website, in promotional or
6 marketing materials, or otherwise in connection with their business or on any
7 website where such use is not authorized by BMW;

8 D. advertising or describing products that are not by BMW, Rolls-
9 Royce, or MINI as "BMW," "Rolls-Royce," or "MINI" products, or otherwise
10 using BMW's trademarks or colorable imitations thereof as or in the names, titles,
11 and listings of products not made or authorized by BMW, such as using the term
12 "BMW Accessories" to sell non-genuine accessories for BMWs, or making any
13 other false or misleading description of fact in connection with products for BMWs;

14 E. assisting, advising, allowing, encouraging, inducing or
15 instructing any supplier or source of or to any Defendant's website or business in
16 creating or posting listings that Defendants know or have reason to know are for
17 products that infringe Plaintiffs' marks or for counterfeit or replica products bearing
18 Plaintiffs' marks;

19 F. failing to immediately remove or disable access to any listing (1)
20 identified by Plaintiffs as allegedly infringing Plaintiffs' marks, or (2) that
21 otherwise comes to the attention of the Defendants and that they know or have
22 reason to know are for counterfeit or replica products bearing Plaintiffs' marks;

23 G. failing to immediately cancel a source's or supplier's access to
24 any Defendant's website, staging area or business (1) identified by Plaintiffs as a
25 seller, buyer, manufacturer, distributor of, or offering such services in connection
26 with, goods allegedly infringing or counterfeiting Plaintiffs' marks, or (2) that
27 otherwise comes to the attention of the Defendants where they know or have reason
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1 to know the member is a seller or buyer of counterfeit or replica products bearing
2 Plaintiffs' marks;

3 H. doing any other act or thing likely to confuse, mislead, or
4 deceive others into believing that Defendants emanate from, are connected with,
5 sponsored by, licensed by, or approved by, BMW, or that Defendants' products and
6 services are sponsored, licensed or approved by BMW or aiding and abetting others
7 to do so;

8 I. otherwise engaging in activity likely to dilute BMW's Roundel
9 logo, "BMW" word mark, RR Badge or any other famous trademark of BMW's;

10 J. utilizing or registering any domain names or sub-domain names
11 that use or incorporate any of BMW's trademarks;

12 K. making any other trademark use of the "BMW" mark, "BMW
13 Group," or "Z8" mark, or any other BMW trademarks or colorable imitations
14 thereof, including use of BMW's trademarks in metatags or any visible use of
15 BMW's trademarks in Google Adwords or other keyword advertising; and

16 L. facilitating, inducing, assisting, aiding, abetting, or supplying
17 the means for any other person or business entity to engage in or perform any of the
18 activities referred to in the above subparagraphs (A) through (H), or effecting any
19 assignments or transfers, forming new entities or associations or utilizing any other
20 device for the purpose of circumventing or otherwise avoiding the prohibitions set
21 forth in subparagraphs (A) through (K).

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that
23 Defendants are directed to:

24 2. permanently delete and remove and recall from all websites, blogs,
25 online auctions, stores, shops, markets, outlets, catalogues, or other channels of
26 commerce any listings for goods bearing counterfeits of the BMW Marks, or any
27 other non-genuine product confusingly similar to Plaintiffs' products, or that
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1 otherwise bear, contain, display or utilize the BMW Marks, any derivation or
2 colorable imitations thereof, or any other BMW trademark or colorable imitation
3 thereof;

4 3. in accordance with § 36 of the Federal Trademark Act, 15 U.S.C. §
5 1118, deliver up for destruction all counterfeit goods that bear Plaintiffs' marks,
6 and/or any other products confusingly similar to Plaintiffs' products, or that
7 otherwise bear, contain, display, or utilize the BMW Marks or any other BMW
8 trademark or colorable imitation thereof, that are in Defendants' possession,
9 custody, or control and all means of making the same;

10 4. in accordance with § 36 of the Federal Trademark Act, 15 U.S.C. §
11 1118, deliver up for destruction any and all guarantees, circulars, price lists, labels,
12 signs, prints, packages, wrappers, pouches, receptacles, advertising and promotional
13 matter, electronic files, and other materials in the possession or control of
14 Defendants bearing the BMW Marks, any derivation or colorable imitations thereof,
15 or any other BMW trademark or colorable imitation thereof; and

16 5. file with the Court and serve on counsel for Plaintiffs within thirty (30)
17 days after entry of this Order, a sworn written statement pursuant to § 34(a) of the
18 Federal Trademark Act, 15 U.S.C. § 1116(a), setting forth in detail the manner and
19 form in which the Defendants have complied with this Consent Judgment and
20 Permanent Injunction.

21 6. provide, without limitation, any information to the Plaintiffs
22 concerning and/or provided by source of goods to any of the Defendants that could
23 identify buyers, sellers, manufacturers or distributors of counterfeit goods bearing
24 Plaintiffs' marks. This information can include, but is not limited to, names,
25 addresses, telephone, email, credit card and bank account information.

26 **IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED**
27 **that:**

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1 7. DinoDirect China Ltd. shall pay via wire transfer to BMW AG a total
2 of USD \$50,000 (fifty thousand dollars) by no later than June 15, 2013;

3 8. In the event of a breach of the Consent Judgment and Permanent
4 Injunction, Defendants will be given 5 days following notice of the breach by
5 Plaintiffs in order to cure the breach. If the breach is not cured within 3 business
6 days, DinoDirect China Ltd. agrees to and shall immediately pay to Plaintiff BMW
7 AG liquidated damages in the amount of USD \$200,000.

8 9. For any repeat failure to cure following the notice provided for in
9 paragraph 8 above, DinoDirect China Ltd. agrees to and shall immediately pay to
10 Plaintiff BMW AG additional liquidated damages in the amount of USD \$500,000.

11 10. The Defendants acknowledge that a breach of this Consent Judgment
12 and Permanent Injunction by the Defendants would result in irreparable injury to
13 Plaintiffs, and that in the event of a breach, Plaintiffs would be entitled to
14 immediate injunctive relief to enforce this Consent Judgment and Permanent
15 Injunction, liquidated damages for past and any ongoing trademark infringement,
16 counterfeiting, or unfair competition, and to reimbursement of their reasonable
17 attorneys' fees and costs arising from bringing an action against Defendants and
18 enforcement of this Consent Judgment and Permanent Injunction.

19 11. This Consent Judgment and Permanent Injunction is binding upon the
20 Defendants, subsidiaries, affiliates, and their respective officers, agents, servants,
21 employees, independent contractors and attorneys, or any other person or entity
22 acting in concert or participating with the Defendants, and on any successor in
23 interest of future owners of the Defendants' websites or the customer data
24 associated with the defendants' websites.

25 12. This Court shall retain jurisdiction of this matter and over the parties
26 thereto for the purpose of enforcing the terms of this Consent Judgment and
27 Permanent Injunction and the separate Settlement Agreement entered into between
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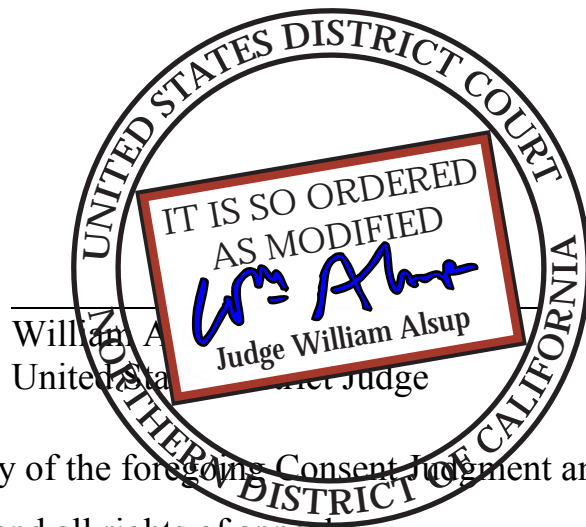
1 plaintiffs and defendants with respect to the subject matter of this action for two (2) years from
2 from the date of entry of this order.

3 13. In accordance with § 34 of the Federal Trademark Act, 15 U.S.C. §
4 1116, the Clerk of the Court shall notify the Commissioner of Patents and
5 Trademarks of the entry of this Final Judgment who shall enter it upon the records
6 of the United States Patent and Trademark Office.

7 14. There being no just reason for delay, the Clerk of this Court is hereby
8 directed to enter this Final Judgment forthwith, which supersedes the Judgment
9 previously entered in this action in favor of Plaintiffs and against Defendants.

10 **IT IS SO ORDERED.**

11 Dated: July 2, 2013.



12 The parties hereby consent to the entry of the foregoing Consent Judgment and
13 Permanent Injunction and waive any and all rights of appeal.
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1 BMW of North America, LLC

DinoDirect Corp.

2 By: _____

By: _____

3 Dated: _____

Dated: _____

5 Rolls-Royce Motor Cars NA, LLC

DinoDirect China Ltd.

6 By: _____

By: _____

7 Dated: _____

Dated: _____

9 Rolls-Royce Motor Cars Limited

B2CForce International Corp.

10 By: _____

By: _____

11 Dated: _____

Dated: _____

13 Bayerische Motoren Werke AG

JianFeng Feng a/k/a Kevin Fenn a/k/a
Kevin Feng

14 By: _____

15 Dated: _____

I.D. No.: 310110197305073634

Dated: _____

1 BMW of North America, LLC

2 By: [Signature]

3 Dated: 6/7/13

DinoDirect Corp.

By: [Signature]

Dated: 5/29/2013

5 Rolls-Royce Motor Cars NA, LLC

6 By: [Signature]

7 Dated: 6/13/13

DinoDirect China Ltd.

By: [Signature]

Dated: 5/29/2013

9 Rolls-Royce Motor Cars Limited

10 By: [Signature] [Signature]

11 Dated: June 6, 2013

B2CForce International Corp.

By: [Signature]

Dated: 5/29/2013

13 Bayerische Motoren Werke AG

14 By: [Signature] [Signature]

15 Dated: June 6, 2013

JianFeng Feng a/k/a Kevin Fenn a/k/a
Kevin Feng

[Signature]

I.D. No.: 310110197305073634

Dated: 5/29/2013